



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2019-0178

RIN 1625-AA09

Drawbridge Operation Regulation; Fox River, Green Bay, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to authorize the Main Street Bridge, mile 1.58, the Walnut Street Bridge, mile 1.81, and the Tilleman Memorial Bridge, mile 2.27, all over the Fox River at Green Bay, WI to operate remotely. The request was made by WISDOT to operate all three bridges from the Walnut Street Bridge. This proposed rule will test the remote operations with tenders onsite, and will not change the operating schedule of the bridges.

**DATES:** Comments and related material must reach the Coast Guard on or before [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0178 using Federal eRulemaking

Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
HDCCTV	High Definition Closed Circuit Television
IGLD85	International Great Lakes Datum of 1985
IRCCTV	Infrared Closed Circuit Television
LWD	Low Water Datum based on IGLD 85
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
OMB	Office of Management and Budget
PLC	Programmable Logic Control
§	Section
U.S.C.	United States Code
WI-FI	Wireless Fidelity
WISDOT	Wisconsin Department of Transportation

**II. Background, Purpose and Legal Basis**

Green Bay, Wisconsin, is located in the eastern portion of the state at the head or southwest end of Green Bay. The Bay is oriented northeast-southwest and is separated from Lake Michigan to the southeast by

the Door Peninsula. Green Bay Harbor, at the mouth of Fox River at the south end of Green Bay, serves the cities of Green Bay, WI, and De Pere, WI. The major commodities handled at the port are coal, limestone, wood pulp, cement, aggregates and agricultural products. The dredged entrance channel leads generally southwest through the shallow water in the south end of Green Bay for about 11.5 miles to the mouth of Fox River and thence upstream for about 7.2 miles to a turning basin at De Pere. There are three bascule bridges operated by WISDOT and the City of Green Bay: Main Street Bridge, mile 1.58, provides 120 feet horizontal and 12 feet vertical clearance in the closed position; the Walnut Street Bridge, mile 1.81, provides 124 feet horizontal and 11 feet vertical clearance in the closed position; and the Tilleman Memorial Bridge, mile 2.27, provides 124 feet horizontal and 32 feet vertical clearance in the closed position.

The Coast Guard is issuing this NPRM under authority 33 U.S.C. 499.

### **III. Discussion of Proposed Rule**

Bridge owners are required to provide necessary drawtenders for the safe and prompt opening of a

bridge and to respond to visual, sound, or radiotelephone communications for openings; unless, authorized by the U.S. Coast Guard District Commander to operate remotely.

This proposed rule will allow WISDOT and the City of Green Bay to operate all three bridges from the Walnut Street Bridge while keeping tenders at the Main Street and Tillman Memorial Bridge while the public observes and comments on the remote operations throughout the summer.

WISDOT stated that their updated PLC, HDCCT system and updated communications systems have improved the safety of bridge operations. These systems use a redundant closed band WI-FI network to communicate between the bridges. The tenders operating the three bridges will be City of Green Bay employees with WISDOT technical assistance. Three distinct consoles will be used to control the three bridges from the Walnut Street Bridge. WISDOT stated WI-FI security protocols are in place to prevent unauthorized bridge operations and there are no physical wires connecting the control panels to any of the bridges.

Additional IFCCTV systems are installed on the bridges to see vessels during limited visibility and WISDOT intends to have extra drawtenders available during heavy weather and high traffic events. WISDOT installed a public address system that allows 2-way voice communication between vessels and the remote tender and a remotely operated VHF-FM Marine Radiotelephone that monitors Channel 16.

This proposed rule will require a tender to be physically at the bridges to evaluate the remote operations and to intervene if there is a failure in the remote abilities. If remote operations are approved and there is a discrepancy with the remote equipment the tender from Walnut Street can open all three bridges manually within 30-minutes.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available

regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge and the bridge will continue to open as required in the current regulation.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C.

605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator because the bridge will continue to open on signal.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or

complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or



on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C.

4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments

and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online

docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1;  
Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1087 by adding paragraph (a)(4) to read as follows:

(a) \* \* \*

(4) The Main Street Bridge, mile 1.58, the Walnut Street Bridge, mile 1.81, and the Tilleman Memorial Bridge, mile 2.27, are operated remotely.

\* \* \* \* \*

Dated: 23 April 2019

N. A. Bartolotta  
Captain, U.S. Coast Guard,  
Commander, Ninth Coast Guard District  
Acting  
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